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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Gregory Bender,  
  
Plaintiff,  
  
v.  
  
Maxim Integrated Products, Inc.,  
  
Defendant.

Case No. C09-01152-SI

**STIPULATED REQUEST FOR  
ORDER AND [PROPOSED] ORDER  
MODIFYING PRETRIAL  
SCHEDULING ORDER**

Pursuant to Fed. R. Civ. P. 16(b)(4) and Civil L.R. 6-2, Defendant Maxim Integrated Products, Inc., (“Defendant”) and Plaintiff Gregory Bender (“Plaintiff”), through their respective counsel, hereby jointly request that the Court modify the existing Pretrial Schedule, issued on February 23, 2010. (Docket No. 51.)

WHEREAS, on October 28, 2009, the Court granted Defendants’ Motion to Temporarily Relieve Maxim’s Discovery Obligations pending a dispute between the parties regarding the sufficiency of Plaintiff’s Infringement Contentions under Patent L.R. 3-1. (Docket No. 34.)

WHEREAS, Defendant’s obligations to serve disclosures under Patent L.R. 3-3 and 3-4 were among the discovery obligations that the Court ordered relieved. (*Id.*)

WHEREAS, on November 19, 2009, the Court ordered that its previous October 28, 2009 order granting Defendant temporary relief from its discovery obligations shall remain in place

1 until the dispute between the parties regarding the sufficiency of Plaintiff's Infringement  
2 Contentions is resolved. (Docket No. 42.)

3 WHEREAS, on February 23, 2010, this Court issued an Order After Hearing which set the  
4 following deadlines for this action:

- 5 • a Further Case Management Conference for July 9, 2010,
- 6 • the Joint Claim Construction Brief due July 16, 2010,
- 7 • Plaintiff's Claim Construction Statement due July 30, 2010,
- 8 • Defendant's Claim Construction Statement due August 13, 2010,
- 9 • Plaintiffs Response Claim Construction Statement due August 20, 2010,
- 10 • the tutorial for September 8, 2010,
- 11 • and the claim construction hearing for September 9, 2010.

12 (Docket No. 51.)

13 WHEREAS, on March 22, 2010, the Court granted Defendant's Motion to Compel  
14 Infringement Contentions That Comply With Patent Local Rule 3-1. (Docket No. 54.)

15 WHEREAS, the March 22, 2010 order stated that "the Court will not order defendant to  
16 proceed with discovery," in light of the order. (*Id.*)

17 WHEREAS, on April 2, 2010, the Court set the deadline for Plaintiff to serve his Second  
18 Amended Infringement Contentions as April 21, 2010, pursuant to the parties stipulation.  
19 (Docket No. 56.)

20 WHEREAS, on April 28, 2010, Plaintiff served his Second Amended Infringement  
21 Contentions, but Defendant contended these amended contentions did not comply with the  
22 Court's March 22, 2010 order.

23 WHEREAS, on May 28, 2010, Defendant filed a Motion For Sanction Of Dismissal based  
24 on Defendant's contentions that Plaintiff's Second Amended Infringement Contentions did not  
25 comply with the Court's March 22, 2010 order.

26 WHEREAS, on June 30, 2010, the Court ordered the hearing on Defendant's motion  
27 rescheduled to July 30, 2010, pursuant to the parties' stipulation to allow deposition of Plaintiff's  
28 declarant for the pending motion.

1 WHEREAS, on July 1, 2010, the Court rescheduled the Further Case Management  
2 Conference scheduled for July 9, 2010, to July 30, 2010, to coincide with the hearing on  
3 Defendant's Motion for Sanction of Dismissal.

4 WHEREAS, the Court has not yet modified the claim construction schedule it ordered on  
5 February 23, 2010, which includes claim construction briefing deadlines prior to and  
6 simultaneous with the next Further Case Management Conference, including a deadline for a  
7 Joint Claim Construction Brief of July 16, 2010, and a deadline for Plaintiff's Statement of July  
8 30, 2010.

9 WHEREAS, because the deadlines under Patent L.R. 3-3 and 3-4 have been stayed, the  
10 deadlines under Patent L.R. 4-1, 4-2, and 4-4—which are triggered by service of Patent L.R. 3-3  
11 disclosures—have also been stayed. Thus service of invalidity contentions, exchange of proposed  
12 terms for construction, and claim construction discovery have not yet taken place.

13 WHEREAS, the parties believe that good cause under Fed. R. Civ. P. 16(b)(4) exists to  
14 modify the pre-trial scheduling order.

15 THE PARTIES HEREBY SUBMIT THIS STIPULATED REQUEST THAT:

16 The Court cancel the following currently scheduled events:

- 17 • the Joint Claim Construction Brief set for July 16, 2010,
- 18 • Plaintiff's Claim Construction Statement due July 30, 2010,
- 19 • Defendant's Claim Construction Statement due August 13, 2010,
- 20 • Plaintiffs Response Claim Construction Statement due August 20, 2010,
- 21 • the tutorial set for September 8, 2010,
- 22 • and the claim construction hearing set for September 9, 2010,

23 and that the Court consider the pretrial schedule at the July 30, 2010 Further Case Management  
24 Conference.

Respectfully submitted,

Dated: July 13, 2010

Jones Day

By: /s/ Gregory L. Lippetz

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Counsel for Defendant  
Maxim Integrated Products, Inc.

In accordance with General Order No. 45, Section X(B), the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

Dated: July 13, 2010

By: /s/ David Kuhn

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Counsel for Plaintiff  
Gregory Bender

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

DATED: \_\_\_\_\_, 2010

By: 

THE HON. SUSAN ILLSTON  
United States District Court Judge